

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

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UNITED STATES OF AMERICA

vs.

CASE NO. 4:02-CR-8 (CDL)

RICARDO KIOWA GONZALES

MOTION TO DIRECT COUNSEL OF RECORD TO REPRESENT  
THE PETITIONER IN HIS EFFORT TO PURSUE A LEGAL  
CLAIM OF DUE PROCESS VIOLATION

Comes Now the petitioner, pro se, and moves the Court to direct Mr. Gilbert K. Davis of DAVIS & ASSOCIATES, 9502-1 Lee Highway, Fairfax, Virginia, 22031, to represent him in his effort to pursue a legal claim pursuant to Federal Rules of Criminal Procedure 48(a) and / or a writ of error coram nobis.

Mr. Davis is the counsel of record and was admitted to practice before this Court pro hac vice. He has been a member in good standing of the Virginia State Bar since 1969. He has served as an Assistant U.S. Attorney for the Eastern District of Virginia, and thus is very familiar with the Federal Rules of Criminal Procedure.

The authority cited by the government and adopted by the court does not apply to petitioner's situation. In U.S. v. Kelley, 849 F.2d 1395, the core issue was a dismissal without prejudice due to a speedy trial violation. In Kelley the court stated, "First, the government has not re-indicted Kelley,

and therefore there is no proceeding that the order or dismissal is collateral to." In petitioner's case, he was re-indicted by the federal government via the collateral venue of the military arm of the federal judicial system.

In Hernandez v. Wainwright, 795 F.2d 389, Hernandez was not attacking the conviction. Here the petitioner is. The order of dismissal was a binding contract that if the government re-indicted the petitioner may and does reserve the right to challenge the good faith of the government's actions. Petitioner contends that contract is still binding.

The petitioner's case is a matter of first impression. There are no other federal cases like it. Without a lawyer the petitioner is hindered in his efforts to pursue a legal claim of Constitutional dimension. Petitioner believes that with the help of Mr. Davis to examine the record research the law, and marshall arguments on his behalf is the only way to be properly and thoroughly heard before the court.

Petitioner contends that Army Regulation 27-10 gives this court the authority to and jurisdiction to decide on the issue of Rule 48(a) or a writ of error coram nobis. AR 27-10 Memorandum OF Understanding, paragraph 6 states:

"Joint Investigation.  
To the extent authorized by law, the Department of Justice investigative agencies and the Department of Defense investigative investigative agencies may agree to enter into joint endeavors. However, all such investigations will be subject to Department of Justice guidelines."

Therefore, the actions of the joint actions of the military and the U.S. Attorney's office are bound by Department of Justice guidelines which in turn are bound by the Federal Rules of Criminal Procedure.

If the court directs counsel of record to continue assisting his client

there will be no additional cost to the government and it is in the public interest to allow the petitioner a chance to be heard on this legal issue which is capable of repetition yet evading review.

The petitioner is not asking for much, he just wants a chance to be heard in court and needs a lawyer to do this effectively.

WHEREFORE, Petitioner moves this honorable court to direct counsel of record to represent him in his legal claim to have the indictment dismissed with prejudice via Rule 48(a) or a writ of error coram nobis.

Done this 3<sup>rd</sup> Day of <sup>November</sup> October, 2005.

Respectfully submitted,

  
Ricardo K. Gonzales  
Petitioner

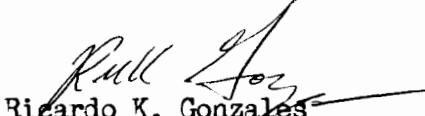
CERTIFICATE OF SERVICE

This is to certify that I have this date served the within and foregoing MOTION TO DIRECT COUNSEL OF RECORD TO REPRESENT THE PETITIONER IN HIS EFFORT TO PURSUE A LEGAL CLAIM OF DUE PROCESS upon government counsel and upon Mr. Gilbert K. Davis, counsel of record, by first class mail, postage prepaid, addressed as follows:

Honorable Dean S. Daskal  
Assistant United States Attorney  
P.O. Box 2568  
Columbus, GA 31902

This 3<sup>rd</sup> Day of <sup>November</sup> October, 2005

Mr. Gilbert K. Davis  
DAVIS AND ASSOCIATES  
9502 4-Lee Highway  
Fairfax, VA 22031

  
Ricardo K. Gonzales